STATE OF MICHIGAN

COURT OF APPEALS

In re Estate of Mae O. Bunch.

GWENDOLYN HOWZE, Personal Representative of the Estate of MAE O. BUNCH, Deceased, and MARY ALEXANDER,

Appellees,

v

BRENDA LAWTON,

Appellant.

UNPUBLISHED
January 18, 2000

No. 210537
Oakland Circuit Court
Family Division
LC No. 97-257401 IE

Before: Saad, P.J., and McDonald and Gage, JJ.

PER CURIAM.

Appellant appeals as of right from the lower court's order granting the motion for summary disposition filed by appellees. We affirm.

Two months prior to her death, decedent composed a document stating that she gave "power of attorney for sale of any and all properties" which she owned at her death to Argusta Upshaw and appellant. In addition, decedent indicated that appellees were to receive the sum of $1.00 each. The document was handwritten, dated, and signed by decedent.

After decedent died, Howze filed a petition seeking appointment as independent personal representative of decedent's estate. Subsequently, appellant filed a petition seeking appointment as successor representative, for supervision of the proceedings, and for determination of heirs. Howze and Alexander moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that decedent's holographic will was invalid because it lacked a residuary clause and testamentary intent. The lower court granted the motion, finding that the holographic will failed not on execution but on construction because it granted only power of attorney.

We review a lower court's decision on a motion for summary disposition de novo. *Harrison v Olde Financial Corp*, 225 Mich App 601, 605; 572 NW2d 679 (1997).

A will which does not comply with MCL 700.122; MSA 27.5122 is valid as a holographic will if it is dated, signed by the testator at the end, and if the material provisions are in the handwriting of the testator. MCL 700.123; MSA 27.5123. When interpreting a will, a court's goal is to ascertain and give effect to the intent of the testator, as derived from the language of the will. If the language is unambiguous, the intent is to be gleaned from the four corners of the instrument. A patent ambiguity exists if an uncertainty as to the meaning appears on the face of the instrument and results from the use of defective, obscure, or nonsensical language. A latent ambiguity exists if the language and its meaning is clear, but some intrinsic fact creates the possibility of more than one meaning. We review a lower court's findings for clear error. *In re Woodworth Trust*, 196 Mich App 326, 327-328; 492 NW2d 818 (1992).

Appellant argues that the lower court erred by granting appellees' motion for summary disposition. We disagree and affirm. Decedent's holographic will states that Upshaw and appellant are to have "the power of attorney for sale" of decedent's property. This unambiguous language does not bequeath the property to Upshaw and appellant. The failure of this language to dispose of the residuary share of decedent's property results in intestate succession for that portion of the estate. The presumption against partial intestacy cannot be used to create an ambiguity where one does not exist. *In re Allen Estate*, 150 Mich App 413, 417; 388 NW2d 705 (1986). Decedent's only remaining heirs at law, Howze and Alexander, take the residuary assets on an intestate basis, decedent's specific bequests notwithstanding. *In re McKay Estate*, 357 Mich 447, 450; 98 NW2d 604 (1959).

Affirmed.

/s/ Henry William Saad
/s/ Gary R. McDonald
/s/ Hilda R. Gage